

REMARKS

The claims are 1-8, 10-13 and 15-24. Claims 9 and 14 have been cancelled without prejudice or disclaimer and the subject matter incorporated into claim 10. Claims 1 and 10 have been amended to define still more clearly what Applicants regard as their invention. Support for the plurality of non-concentric convolutions may be found in paragraph [0004] of the publication of the subject specification, U.S. 2007/0166434 (“the ‘434 publication”). Support for the amendment regarding the cross sectional area may be found in paragraph [0014] of the ‘434 publication. Claims 11, 15-17, 20 and 23 have been amended to correct claim dependency. No new matter has been added. Favorable reconsideration of the claims is respectfully requested.

Claims 1-6, 9-10, 15-19 and 23-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by US 3,973,044 (Giddey).

Prior to addressing the grounds of rejection, Applicants wish to briefly review certain key features and advantages of the present application.

The present invention is directed toward a rippled wafer comprising a plurality of non-concentric convolutions of a convoluted wafer ribbon. The rippled wafer has an average of at least 12 turns/cm² of cross sectional area, wherein a turn is a change in direction of the wafer ribbon of at least 45° and the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. The folded convoluted wafers of the prior art are comprised mainly of flat or straight portions of wafer ribbon with relatively few turns. In contrast, the inclusion of low density, low satiating rippled wafers of the present invention, which melt away quickly with no tooth-packing and no hard “snap” in confectionery products, delivers textural lightness and variation not found in

known confectionery products. Paragraph [0023] of the ‘434 publication. Specifically, in the case of well-known three-dimensional book wafers (a confectionary product of wafers separated by layers of cream), when they are made with rippled wafers of the present invention having a plurality of convolutions separated by air pockets, they have a different texture than when they are made using wafers of the prior art. Paragraph [0026] of the ‘434 publication.

Giddey discloses a proteinaceous food product, most applicable to a simulated meat product (col. 4, ln 67-68), and a method of producing the product wherein it forms a structure of many small and larger folds. The goal of Giddey is to create a product that closely approximates the structure of natural meat. Col. 2, ln 8-10. While Giddey teaches that the parameters of its process may be “altered to obtain products of different properties,” Applicants submit that this disclosure alone does not teach or suggest that it may be used with wafers and confectionary products. At col. 5, ln 52-61, Giddey expands on this statement and provides a lengthy list of materials that may be used in its invention. None of the listed options approach anything similar to a confectionary or wafer product. Wafers are a particular baked product characterized by its “snap” when consumed. They have a crisp texture and will break when formed into shapes if not properly handled. Since simulated meat products fail to maintain a similar characteristic and thus do not have the same issues in manufacture as wafers, there is no evidence that the method of Giddey would successfully work with wafers. Indeed, Applicants believe that it would not.

Simply, Giddey fails to disclose all of the elements of the presently claimed invention. Giddey fails to disclose a rippled wafer comprised of a plurality of non-

concentric convolutions and having an average of at least 12 turns/cm² of cross sectional area, wherein the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. Since Giddey fails to disclose all the claimed elements, this reference cannot support an anticipation rejection under 35 USC § 102(b). Consequently, Applicants respectfully submit that the anticipation rejection must be withdrawn.

Claims 1-6, 9-11, 15-19 and 23-24 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by WO 03/005832 (Clarke).

Clarke discloses an apparatus and method for producing a regular film of foodstuff. Clarke fails to disclose all of the elements of the presently claimed invention. Clarke fails to disclose a rippled wafer comprised of a plurality of non-concentric convolutions having an average of at least 12 turns/cm² of cross sectional area, wherein the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. Since Clarke fails to disclose all the claimed elements, this reference cannot support an anticipation rejection under 35 USC § 102(b). Consequently, Applicants respectfully submit that the anticipation rejection must be withdrawn.

Claims 7-8, 12-13 and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giddey in view of Clarke and GB 2316852 (Biggs).

As explained above Giddey fails to suggest or to disclose a rippled wafer having a plurality of non-concentric convolutions and an average of at least 12 turns/cm² of cross sectional area, wherein the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. There is simply no disclosure or suggestion that the ripples of a simulated meat product of Giddey are produced having at least 12 turns/cm² of cross sectional area. Furthermore, there is no evidence that the disclosure of

Giddey, aimed toward forming a product resembling the structure of natural meat, might be used to make a rippled wafer. At col. 5, ln 52-61, Giddey provides a list of materials that may be used in its invention, but none of the suggested materials resemble a product similar to a confectionary or wafer. Since Giddey relates to a method of making a proteinaceous food product, Applicants submit that Giddey would not have been combined with methods of making wafers and confectionary products to yield predictable results. According to MPEP § 2143.01, the mere fact that references can be combined does not render the resultant combination obvious unless the results would have been predictable.

As explained above, Clarke fails to suggest or disclose a rippled wafer having a plurality of non-concentric convolutions and an average of at least 12 turns/cm² of cross sectional area, wherein the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer. While Clarke suggests that a film product might be rippled, it fails to discuss the specific dimensions and turns of a wafer as presently claimed. There is simply no disclosure or suggestion of the rippled film product having a plurality of non-concentric convolutions or having 12 turns/cm² of cross sectional area, wherein a turn is a change in direction of the wafer ribbon of at least 45°. As disclosed above, by making a rippled wafer having an average of at least 12 turns/cm² of cross sectional area, wherein a turn is a change in direction of the wafer ribbon of at least 45° and the cross sectional area is the volume of the formed wafer divided by the length of the formed wafer, a wafer may be achieved having a unique texture and lightness that is not found in wafers of the prior art. Therefore, Clarke fails to suggest or disclose the features of the presently claimed invention. Applicants submit that any combination of Clarke and Giddey fails to render the present invention obvious.

As acknowledged by the Examiner, both Clarke and Giddey fail to suggest or disclose the ratio of cross sectional edge length to average cross sectional area of the formed thin film. The Examiner alleges that Biggs discloses this feature of the present invention. However, even if this were taken as true, Applicants submit that the combination of Giddey, Clarke and Biggs does not render the present invention unpatentable.

Biggs fails to remedy the deficiencies of Clarke and Giddey as discussed above. Biggs discloses a process for shaping a wafer and discloses that a wafer may be shaped into a desired form, such as a fold or bend. However, Biggs fails to suggest or disclose a rippled wafer (i) having a plurality of non-concentric convolutions, (ii) having an average of at least 12 turns/cm² of cross sectional area, (iii) a turn that is a change in direction of the wafer ribbon of at least 45° and (iv) a cross sectional area that is the volume of the formed wafer divided by the length of the formed wafer. Therefore, Applicants submit that Giddey, Clarke and Biggs, alone or in any permissible combination, fail to render obvious the present invention and respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Raymond R. Mandra/
Raymond R. Mandra
Attorney for Applicants
Registration No. 34,382

FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, New York 10104-3800
Facsimile: (212) 218-2200

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